

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 DEMOCRATIC NATIONAL COMMITTEE,

5 Plaintiff,

6 v.

18 CV 3501

7 THE RUSSIAN FEDERATION, et
8 al.,

9 Defendants.
10 -----x

New York, N.Y.
September 13, 2018
4:40 p.m.

11 Before:

12 HON. JOHN G. KOELTL,

13 District Judge

14 APPEARANCES

15 COHEN MILSTEIN SELLERS & TOLL
16 Attorneys for Plaintiff
17 BY: JOSEPH M. SELLERS
18 GEOFFREY A. GRABER
19 ALISON DEICH
20 JULIA ANN HORWITZ
21 MICHAEL BENJAMIN EISENKRAFT

22 JONES DAY (DC)
23 Attorneys for Defendant Donald J. Trump For President,
Inc.
24 BY: MICHAEL A. CARVIN
25 JAMES MATTHEW GROSS

26 STRATEGYSMITH, P.A
27 Attorneys for Defendant Stone
28 BY: GRANT JEFFREY SMITH

29 CHADBOURNE & PARKE LLP
30 Attorneys for Defendant Kushner
31 BY: CHRISTOPHER D. MAN

1 APPEARANCES (Cont'd)

2
3 PIERCE BAINBRIDGE BECK PRICE & HECHT LLP
4 Attorneys for Defendant Papadopoulos
BY: BY: CAROLINE JOHNSTON POLISI
5 CHRISTOPHER NORMAN LAVIGNE

6 HERBERT SMITH FREEHILLS NEW YORK LLP
7 Attorneys for Agalarov Defendants
BY: SCOTT SONNY BALBER

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1 (Case called)

2 THE DEPUTY CLERK: Will all parties please state who
3 they are for the record.

4 MR. SELLERS: Good afternoon, your Honor. Joseph
5 sellers representing the Democratic National Committee.

6 MR. GRABER: Geoffrey Graber, also on behalf of the
7 Democratic National Committee.

8 MS. DEICH: Alison Deich also on behalf of the
9 Democratic National Committee.

10 MS. HORWITZ: Julia Horwitz, also on behalf of the
11 Democratic National Committee.

12 MR. EISENKRAFT: Michael Eisenkraft on behalf of the
13 Democratic National Committee.

14 MR. CARVIN: Good afternoon, your Honor. Michael
15 Carvin for Donald J. Trump For President, Inc.

16 MR. GROSS: Good afternoon, your Honor. James Gross
17 for Donald J. Trump For President, Inc.

18 MR. SMITH: Good afternoon, your Honor. Grant Smith
19 for Roger J. Stone, Jr.

20 MR. BALBER: Good afternoon, your Honor. Scott Balber
21 for Aras Agalarov and Emin Agalarov.

22 THE COURT: Hold on one second.

23 MR. MAN: Good afternoon, your Honor. Chris Man for
24 Jared Kushner.

25 MS. POLISI: Good afternoon, your Honor. Caroline

1 Polisi for George Papadopoulos.

2 MR. LAVIGNE: And Christopher Lavigne on behalf of
3 George Papadopoulos.

4 THE COURT: Okay. Good afternoon, all.

5 I've reviewed the complaint. I also have the letter
6 from plaintiff's counsel dated August 31, 2018. Plaintiff's
7 counsel asks to file an amended complaint, and there are no
8 objections to that.

9 Plaintiff's counsel asks for a premotion conference to
10 make a motion to file an amended complaint, and there was no
11 objection to that. I take it that there is no objection to
12 filing an amended complaint. Okay.

13 When do you want to file an amended complaint?

14 MR. SELLERS: Your Honor, we'd like to file it on or
15 before October 12.

16 THE COURT: Okay.

17 Plaintiffs want to file an amended complaint by
18 October 12. Plaintiff may do that. I'll enter an order. A
19 motion is not necessary.

20 The next step then is responses, either answers or
21 motions, based upon the current complaint and what the
22 plaintiff says is going to be in the amended complaint.

23 Is it the desire of the defendants to make motions or
24 to file answers?

25 MR. CARVIN: Your Honor, Michael Carvin. Donald Trump

1 For President will be filing a motion to dismiss.

2 THE COURT: Have the parties talked about a proposed
3 schedule?

4 MR. SELLERS: Yes, your Honor, we have. We have I
5 think agreed on a proposed schedule in which I believe the
6 opening motion would be filed within 90 days after the amended
7 complaint.

8 THE COURT: I'm sorry? How long?

9 MR. SELLERS: Ninety days. That's the proposal.

10 THE COURT: Okay.

11 MR. SELLERS: We agreed on that as a proposal,
12 your Honor. The response would be 90 days thereafter, and
13 there would be a reply permitted 45 days after that. I believe
14 Mr. Carvin and I agree on that.

15 MR. CARVIN: We agree to that, your Honor.

16 THE COURT: Could I ask, the reply is how long after
17 that?

18 MR. CARVIN: Forty-five days after their opposition.

19 THE COURT: I have two difficulties with the schedule,
20 even though the parties have agreed to it. The first problem I
21 have is it is exceedingly long. The second problem I have is
22 my usual practice is after the defendants have made a motion to
23 dismiss, I give the plaintiffs an opportunity to file an
24 amended complaint in response to the motion to dismiss, and the
25 defendants may then file a motion to dismiss directed to the

1 amended complaint, and the original motion to dismiss is denied
2 without prejudice.

3 Now, that probably can't preclude the defendants from
4 making yet another motion to dismiss after there is another
5 amended complaint, but it should reduce the number of opinions
6 denying or granting in part motions to dismiss and having the
7 defendants say, you know, if you grant the motion to dismiss,
8 give us an opportunity to file yet another amended complaint.

9 So I would want the schedule to reflect after the
10 first motion to dismiss is filed, the plaintiffs would have the
11 opportunity, perhaps 30 days, to either file an amended
12 complaint or say that they're going to respond to the motion to
13 dismiss.

14 And under those circumstances, I assume that the
15 plaintiffs will give me their best complaint; that they're
16 going to tell me everything that they possibly can tell me in
17 support of that complaint so that if I were to eventually grant
18 the motion to dismiss after that process, the plaintiffs would
19 not be coming to me and saying, I have something else that we
20 really wanted to say and we didn't say.

21 So with that in mind, traditionally the parties would
22 be able to come up with a reasonable schedule and give it to
23 me. So I would think that the first motion to dismiss should
24 be made within 60 days after the amended complaint and the
25 plaintiffs would then advise within 30 days whether they're

1 filing an amended complaint or they're standing on their
2 complaint and they're going to respond to the motion to
3 dismiss.

4 If they responded to the motion to dismiss, they would
5 then respond to the motion perhaps in 45 days. So you can work
6 out the various parameters of that between you all and give me
7 an agreed-upon schedule.

8 Is that satisfactory with everyone?

9 MR. SELLERS: That's fine with the plaintiff.

10 MR. CARVIN: That's fine with the Trump defendant,
11 your Honor.

12 THE COURT: So I'll enter an order which says that the
13 plaintiffs will file an amended complaint by October 12 and the
14 parties will provide the Court with a scheduling order for
15 responsive motions thereafter.

16 The parties will provide the scheduling order by --
17 how about September 28? That should give you ample time to
18 work that out.

19 MR. SELLERS: That's fine with us, your Honor.

20 THE COURT: Right, defendants?

21 MR. CARVIN: That's fine, your Honor.

22 THE COURT: Okay. Anything else I can do for you
23 today?

24 MR. SELLERS: Your Honor --

25 THE COURT: Mr. Sellers.

1 MR. SELLERS: It may be premature to discuss it, but
2 in connection with the motion practice, we'd like to propose
3 that to the greatest extent possible, there be some kind of
4 consolidated briefing on the motions to dismiss; that arguments
5 that are similar might be presented in common fashion so we
6 don't have a dozen motions.

7 THE COURT: Yes. I hope the defendants can work that
8 out. Mr. Carvin can try and coordinate with the defendants. I
9 appreciate that there are individual arguments that individual
10 defendants may wish to make, but there is probably a lead brief
11 that could be filed and then additional briefs by the other
12 parties. I certainly hope you can avoid duplication. I hope
13 you can promote brevity on both sides.

14 MR. CARVIN: Speaking only for my client, your Honor,
15 what we were hoping to envision was perhaps a brief that covers
16 most of the law, and we would take the lead on that.

17 But I think I speak for the other defendants. There
18 are a myriad of different factual circumstances which need to
19 be addressed by your Honor. I suppose there is also sovereign
20 immunity and other issues that don't implicate us at all. But
21 we will strive earnestly to give you a centralized legal
22 briefing on what I would consider the common legal issues and
23 have the other briefs only supplement.

24 THE COURT: I understand that there are separate legal
25 arguments on behalf of some of the defendants. Just to the

1 extent possible, I would like to avoid duplication.

2 Anything else?

3 MR. SELLERS: Not from the Democratic
4 National Committee, your Honor. Thank you.

5 MR. CARVIN: Your Honor, perhaps one clarification.

6 THE COURT: Sure.

7 MR. CARVIN: In light of your decision on the motion
8 to dismiss, will we need a premotion conference?

9 THE COURT: No.

10 MR. CARVIN: I just wanted to clarify that. Thank
11 you.

12 THE COURT: The reason for the premotion conference is
13 to attempt to clarify the issues, to determine whether an
14 amended complaint could possibly resolve the motions to
15 dismiss. And with the schedule that I've set out for you, that
16 resolves the issue of the need for the premotion conference.
17 But thank you for raising it.

18 Anything else from anyone? No. Okay. Good to see
19 you all.

20 (Adjourned)

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